

Appl. No. : 10/646,097
Filed : August 22, 2003

REMARKS

This is responsive to the Examiner's Office Action dated December 21, 2006. Claims 59, 65, 73 and 80 have been amended, and Claims 46-58 and 87-99 have been canceled. Thus, Claims 59-86 are pending in this application.

The status of all claims and the text of all pending claims are shown above. The specific changes to the amended claims are shown by [[double brackets]] or ~~strikethrough~~ for any deletions and underlining for any insertions.

Applicant would like to thank Examiners David Willse and Javier G. Blanco for the courteous Interview extended to the undersigned Attorney of Record, and other members accompanying him, on February 15, 2007.

Terminal Disclaimer - Double Patenting

The Examiner rejected Claims 65-69 under obviousness-type double patenting over claims 13, 14, 18, 19, 20 and 27 of U.S. Patent No. 6,610,101 B2.

While the assignee of the instant application does not necessarily acquiesce in the grounds of this rejection, a Terminal Disclaimer in accordance with 37 C.F.R. 1.321(c) is filed herewith, as discussed in the Interview, in order to promptly resolve these rejections.

Indefiniteness Rejections

The Examiner rejected Claims 59-64 and 71 under 35 U.S.C. § 112, ¶2 as being indefinite. More specifically, the Examiner indicated that in Claim 59 the use of "resistance" is unclear as to what particular resistance is being referred to.

As discussed in the Interview, Applicant has amended independent Claim 59 so that it now recites "a resistance." The Examiner(s) agreed that this amendment would overcome the indefiniteness rejections.

It is believed that this amendment does not alter the scope of the claims. Claims 60-64 and 71 depend from Claim 59.

Accordingly, Applicant respectfully requests the Examiner to withdraw the indefiniteness rejections of Claims 59-64 and 71.

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Anticipation Rejections

The Examiner rejected Claims 59-72 under 35 U.S.C. § 102(e) as being anticipated by Biedermann (U.S. Patent No. 6,423,098 B1).

Applicant respectfully traverses these rejections and the Examiner's characterization of Biedermann. However, to advance prosecution, Claims 59 and 65 have been amended. Applicant reserves the right to pursue any of the prior versions of the claims in one or more continuing applications and/or at a later date.

As discussed in the Interview, independent Claims 59 and 65 have been amended to recite, among other things, "wherein said damping is created primarily by shear forces." The Examiner(s) agreed that these amendments would overcome Biedermann.

Claim 65 has been further amended, as shown above, to provide proper antecedent basis for "said damping" by replacing "operating primarily in shear mode" with "configured to provide damping to a prosthetic knee."

Claims 60-64 and 71 depend from Claim 59, and Claims 66-70 and 72 depend from Claim 65.

Accordingly, Applicant submits that Claims 59-72 are in condition for allowance.

Rejoinder of Withdrawn Claims 73-86

In response to prior Restrictions Requirement(s), Applicant had previously withdrawn Claims 46-58 and 73-99, but had requested the Examiner to reconsider reinstatement of these claims and their examination.

Applicant has hereby canceled Claims 46-58 and 87-99.

However, withdrawn Claims 73-86 remain pending in this application of which Claims 74-79 depend from independent Claim 73 and Claims 81-86 depend from independent Claim 80.

Independent Claims 73 and 80 have been amended, as shown above, to recite, among other things, "wherein said damping is created primarily by shear forces." Similar language is also present in amended independent Claims 59 and 65, as discussed in the Interview.

Therefore, Applicant believes that it would not be an undue burden on the Examiner to examine Claims 73-86 on the merits. Accordingly, Applicant respectfully requests the Examiner to grant rejoinder of Claims 73-86.

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Applicant submits that Biedermann does not teach or suggest the unique combination of these claims. Accordingly, Applicant respectfully submits that Claims 73-86 are allowable over Biedermann.

As also noted above, Applicant reserves the right to pursue any of the prior versions of the claims in one or more continuing applications and/or at a later date.

CONCLUSION

In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Examiner is cordially invited to contact the undersigned such that any remaining issues may be promptly resolved. Also, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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